



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

Case #: FOP - 175084

PRELIMINARY RECITALS

Pursuant to a petition filed on June 21, 2016, under Wis. Admin. Code §HA 3.03, to review decisions by the Dane County Dept. of Human Services regarding overpayments of FoodShare benefits (FS), a hearing was held on August 9, 2016, by telephone. Hearings set for July 21, 2016, and July 17, 2016, were rescheduled at the petitioner's request. At the request of the county agency, the record was held open for 10 days for the submission of additional information.

The issue for determination is whether the county agency correctly determined on May 13, 2016, that the petitioner was overpaid a total of \$10,824 of FS in 6 sub-claims between July 1, 2010 and April 30, 2016, due to client error in failing to provide accurate household information for FS benefits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED], ESS
Dane County Dept. of Human Services
1819 Aberg [REDACTED]
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is currently a resident of Dodge County. She formerly resided in Adams County and received FS benefits as the casehead of a reported 1 person FS household during several time periods between July 1, 2010 and April 30, 2016.

2. [REDACTED] was a separate casehead and had a separate FS household of record with the Department.
3. The paternal grand-daughter of the petitioner and her husband is [REDACTED], and originally during these time periods she was treated as a member of her biological father's third separate FS household. His name is [REDACTED], and he is [REDACTED] and [REDACTED] 35 year old adult son. He was reported to be living next door to the building in which his father and mother live. (CCAP paternity records online for [REDACTED] indicate this was likely [REDACTED].)
4. It was reported to the Adams County Department of Human Services by [REDACTED] in an ACCESS online application filed on December 18, 2010, that he lived alone at [REDACTED]. He repeated stating this living arrangement and address in re-certification applications on December 21, 2011; and January 14, 2013. See, Exhibits #3A, #3B and #3C.
5. The petitioner reported to Adams County Department of Human Services as follows:
 - a) In ACCESS applications filed on June 21, 2011 and June 2, 2012, she reported that she lived at [REDACTED] (**Exhibits #4A & #4B**);
 - b) In A Six Month Report Form dated November 30, 2012, she reported that she lived alone at the **same address as in Exhibits #4A and #4B** (Exhibit #4C);
 - c) On April 18, 2013, the petitioner filed a Change Report stating that **her new address was [REDACTED]** (Exhibit #4D);
 - d) In an Change Report online filed on May 6, 2013, **the petitioner reported she now lived at [REDACTED]** (Exhibit #4E);
 - e) In an ACCESS application filed on May 22, 2013 the petitioner again **reported she was living at [REDACTED]** (Exhibit #4F);
 - f) On December 6, 2013, the petitioner reported in a Six Month Reporting Form that she continued to **live at [REDACTED]** (Exhibit #4G);
 - g) In an ACCESS application filed on May 28, 2014 the petitioner again **reported she was living at [REDACTED]** (Exhibit #4H);
 - h) In an ACCESS application filed on June 29, 2015, the petitioner reported to the agency that she had moved to [REDACTED] (Exhibit #4I);
 - i) In An ACCESS application filed on January 4, 2016, the petitioner again reported to the agency that she had moved to [REDACTED] (Exhibit #4J).
6. [REDACTED] and his daughter [REDACTED] were reputed by [REDACTED] (and not contradicted by [REDACTED] at the hearing) to be living together in a residence next door, apparently located at [REDACTED] since at least the "fall" of 2011.
7. On September 23, 2013, Adams County Sheriff's Deputy [REDACTED] responded to an incident at [REDACTED], in which a young man was hiding in the woods after being run off the [REDACTED] property, apparently by [REDACTED]. Evidently, he was a 19 year-old who had traveled from Connecticut to [REDACTED] to be with [REDACTED], then age 15. In the course of his investigation, [REDACTED] wrote in his report that [REDACTED] told him that day that "...he was [REDACTED]'s biological father and had full custody of her. He stated he lives next door but [REDACTED] lives with his father and mother." (See, Exhibit B, at p. 7.) [REDACTED] was a neighboring property across

the street from what was in essence the extended [REDACTED] compound, i.e., [REDACTED]
[REDACTED]

8. On June 24, 2014, Adams County Health & Human Services Department child protection worker [REDACTED] paid an unannounced home visit to the residence of [REDACTED] and [REDACTED] at [REDACTED]. She was investigating the need of [REDACTED] for child protection or services after she ran away to Connecticut. She met with [REDACTED], and he told her, as she recorded in her case notes:

He reports that his household consists of him, his girlfriend [REDACTED] (DOB: [REDACTED], their daughter in common) (ALJ's Note: "F.F.", DOB omitted here), and [REDACTED] son (ALJ's Note: Minor's name and birth date omitted here). [REDACTED] reported that [REDACTED] has always lived with her grandparents as she helps them and enjoys being with them. He reports that it was an informal agreement as they wanted her to stay where she was comfortable.

See, Exhibit A, at p.1.

9. Worker [REDACTED] said that she toured [REDACTED] & [REDACTED] home on June 26, 2014 at [REDACTED]. See, Exhibit #13. She stated in her case notes as follows:

Worker did a walkthrough of [REDACTED] and [REDACTED]'s home. It was observed to have 3 large great dane dogs that were appropriately put away. The home was clean. The extra bedroom did have several stacked boxes and they report that they use this room for storage. As they do not have a basement. Worker observed [REDACTED] to have her own bedroom and bathroom that was appropriate furnished.

See, Exhibit A, at p. 1.

10. [REDACTED] actually resided with her grandparents, [REDACTED] and [REDACTED], through-out the period of June 21, 2011 - July 30, 2014, at which time she was pregnant and placed in foster care. She lived with them again after foster care ended, from October 2, 2014 – November 30, 2015.
11. The CPS worker, [REDACTED] testified at the hearing that she saw no barriers or doors separating the residence where [REDACTED] and [REDACTED] lived, and her recollection was that persons in the home could access all of it.
12. The unit identified as Apartment 1, at [REDACTED] [REDACTED] had two bedrooms; the unit identified as Apartment 2, at [REDACTED] [REDACTED] had one bedroom.
13. During most of the events relevant here, [REDACTED] lived next door at [REDACTED] with his blended family. [REDACTED] was not living with him, but visited him nearly every day.
14. On November 5, 2014, [REDACTED] gave birth to a daughter, [REDACTED].
15. The [REDACTED] realty was sold in foreclosure in the first half of 2015.
16. The petitioner and her husband [REDACTED] again lived together at the [REDACTED] residence; the lease was effective beginning on or about June 29, 2015.
17. Effective December 1, 2015, [REDACTED] began living with [REDACTED] and the biological father of [REDACTED].

18. On May 13, 2016, the Dane County Human Services Department, as agent for the Wisconsin Department of Health Services and the Juneau County Department of Human Services, issued six FoodShare Overpayment Notice(s) and correlated Worksheets, identifying 6 FS overissuance claims, to the petitioner, to-wit:

- a) FS Overpayment Claim No. [REDACTED], asserting the petitioner was overpaid FS totaling \$2,569 from July 1, 2010 – June 30, 2011, due to client error in failure to report accurate information;
- b) FS Overpayment Claim No. [REDACTED], asserting the petitioner was overpaid FS totaling \$2,636 from July 1, 2011 – June 30, 2012, due to client error in failure to report accurate information;
- c) FS Overpayment Claim No. [REDACTED], asserting the petitioner was overpaid FS totaling \$2,852 from July 1, 2012 – June 30, 2013, due to client error in failure to report accurate information;
- d) FS Overpayment Claim No. [REDACTED], asserting the petitioner was overpaid FS totaling \$2,413 from July 1, 2013 – June 30, 2014, due to client error in failure to report accurate information;
- e) FS Overpayment Claim No. [REDACTED], asserting the petitioner was overpaid FS totaling \$45 from July 1, 2014 – October 31, 2014, due to client error in failure to report accurate information;
- f) FS Overpayment Claim No. [REDACTED], asserting the petitioner was overpaid FS totaling \$309 from February 1, 2016 – April 30, 2016, due to client error in failure to report accurate information.

See, Exhibits #8A (Worksheets) and #8B (The six Overpayment Notices provided in open records period.) The Notices each stated that the petitioner was jointly liable for these six overpayment debts with [REDACTED], and [REDACTED] was also sent a copy of these Notices. See, Exhibit 8C (the six Overpayment Notices addressed to [REDACTED] and provided in the open records period.) And see, Exhibit #1.

The agency treated the household as a 3 person household for overpayment purposes from July 1, 2010, through September 30, 2014; a two person household in October, 2014; and a 2 person household in the period of February – April, 2016. See, Exhibit 8A.

19. The agency computed the FS overpayments using all income of the household members, and a shared mortgage and utility obligation amount derived from Exhibit D, as reflected in the overpayment calculations in Exhibit 8A, and the petitioner did not specifically contest this computation of allowable shelter and utility expenses.
20. There was no overpayment alleged in the period of November, 2014 – July, 2015. See, Exhibit 8A.
21. On June 21, 2016, the petitioner filed an appeal with the Division of Hearings & Appeals, contesting the overpayment determinations of May 13, 2016, and asserting that she did not live with [REDACTED]; and that [REDACTED] did not live with her and [REDACTED], during the overpayment periods listed in Finding #12. Rather, she asserts that [REDACTED] lived in a separate apartment at [REDACTED] and [REDACTED] and [REDACTED] lived in another neighboring residence at [REDACTED]. See, Exhibit #13.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin

Handbook, App. 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. *Id.*

In a Fair Hearing concerning the propriety of an overpayment determination, the Department, by its agents, has the burden of proof to establish that the action taken by the agent was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome its evidence of correct action.

The petitioner did not personally testify. Rather, she offered her husband's testimony on her behalf. Via [REDACTED], they adamantly attacked the overpayments on two grounds. First, they assert they maintained separate FS households as they were estranged and living in two separate units at [REDACTED] [REDACTED]. And second, that their grand-daughter [REDACTED] was always living with her father during the serial overpayment time periods, i.e., with [REDACTED] and his blended family next door at [REDACTED].

[REDACTED] was not presented to testify to corroborate this claim, or explain why he told Deputy Sheriff [REDACTED] in September, 2013, that [REDACTED] had always lived with [REDACTED] and [REDACTED]. Rather, their adult daughter [REDACTED] and [REDACTED] testified that this was so and always had been. [REDACTED] went further and testified that she told the Child Protection Workers she lived with [REDACTED] and [REDACTED] because she did not want to go to a foster home, and that she was lying when she said this.

The CPS worker, [REDACTED] [REDACTED], testified and corroborated that her case notes were accurate and contemporaneously prepared by her, and that she visited [REDACTED] & [REDACTED] home, and was told that [REDACTED] lived with them; viewed her bedroom; and the other two bedrooms at [REDACTED], and found that the third bedroom was used for storage, and that there are only 3 bedrooms. This left the third bedroom to be shared by [REDACTED] and [REDACTED]. She found [REDACTED]'s personal effects in the bedroom designated as [REDACTED]'s by the couple. She testified that there were not separate units at [REDACTED], i.e., there was no internal barrier to moving about anywhere within the building.

[REDACTED] basically said she was lying and that she had never been in his home at [REDACTED] [REDACTED].

Now there were only *three* bedrooms at [REDACTED] because one of them had been converted to a kitchen. See, Exhibit #13, floor plan of home. And while that does also mean there were *two* kitchens, the testimony of [REDACTED] and her original casenotes make it crystal clear that [REDACTED] was living with [REDACTED] and [REDACTED] in a house that was not physically divided, and that she had a room there and it was presented to her in the course of a formal investigation of a serious child protection matter that [REDACTED] lived with them. And [REDACTED] and [REDACTED] certainly gave that impression in the home visit. Further, hearsay testimony from the Sheriff's Report makes it clear that [REDACTED] corroborated that living arrangement in his September 23, 2013, statement to Deputy Sheriff [REDACTED]. Likewise, the CPS casenotes indicate that [REDACTED]'s 5 year-old grandchild told worker [REDACTED] that “[REDACTED] lives with her grandparents and will sleep in her room or on the couch.” See, Exhibit A-7. While again hearsay evidence, indeed, hearsay within hearsay, it is admissible and also corroborates [REDACTED]'s direct testimony at the hearing, as [REDACTED]'s report does.

[REDACTED], [REDACTED], [REDACTED], and implicitly [REDACTED], all maintained that [REDACTED] did not live with [REDACTED] and [REDACTED], and that [REDACTED] and [REDACTED] lived separately and estranged.

On rebuttal to that evidence, the agency provided proof that [REDACTED] and [REDACTED] moved in July, 2015, into a new leasehold in Beaver Dam together. This was explained away by [REDACTED] and [REDACTED] as because of his special needs and declining health. It is of note that they are not divorced, and have not filed for divorce.

This is without a doubt one of the most elaborate Rube Goldberg-ian fact patterns ever placed before me, and one answered by an agency case with every single “pot and pan” thrown into the proverbial “sink” as well.

I do not find [REDACTED], [REDACTED] or [REDACTED], credible at all about household living arrangements. [REDACTED] essentially remained silent, so it is not fair to describe her as not credible, as she merely allowed the others to speak at the hearing. Frankly, this is the most contrived, self-serving, evasive, fully convenient, and fabricated living arrangement argument ever presented to the Division. Their mutually reinforcing stories that [REDACTED] and [REDACTED] did not live with [REDACTED] is internally inconsistent, contradicted specifically by a credible witness, [REDACTED], who was corroborated by contemporaneous case notes and by hearsay report notes from Sheriff [REDACTED], and by the three bedroom layout of the [REDACTED] home in question. It is also contradicted by the fact that [REDACTED] and [REDACTED] *still* live together! They all have been influenced by strong family bias in this hearing. [REDACTED] in particular asks me to believe that she is truthful *now* because she lied then at the time of the CPS investigation when it was in her best interests to do so. I think the same is true right here, right now about all three witnesses. Frankly I think they have shown themselves to be “artful dodgers”. The old saw is sometimes the best saw. *It is easy to tell a lie. It is difficult to tell only one lie.* This story rings hollow and I find it a fabrication by the entire family out of a desire to avoid the large overpayment debt at issue here. The standard of review here is that it is “more likely than not” that the overpayment occurred. Frankly, I think that this household doing a bit more than making reporting “errors”. The history of their address reporting is replete with errors about what house number each was in, and then switching purported units and addresses. It all looks very conveniently like one big shell game. I don’t believe any of them. Rather, I believe they would say almost anything to support the conclusion that there was not an overpayment.

The agency, conversely, seems to have no ability remaining to discern what is relevant information in a hearing about an overpayment. The case was a veritable dump of hundreds of pages of evidence, much of it only tangentially relevant or of limited or no evidentiary value.

A fair hearing is not intended to be a “file dump”. It is intended to be a thoughtful presentation for a summary hearing about a simple issue or set of issues. Much evidence may be only of real use as rebuttal formally presented after a party presents opposing evidence. Further, this hearing system is moving to an electronic filing and presentation system. This agency needs to get its act together and triage the evidence that is ***necessary to establish the overpayment, and to counter opposing evidence on rebuttal.*** This case presentation was simply a dump of every document put in the file over several months. ***Let me repeat it so it is clear: submit clear and relevant evidence establishing the overpayment and computations. Only. Then rebut with necessary primary evidence as the hearing develops. This agency needs to fully re-design its approach to overpayment cases.***

Based upon a level of evidence in this record far exceeding the preponderance of the evidence test, I can only conclude that the county agency correctly determined the petitioner was overpaid total of \$10,824 in FS as described in Finding of Fact No. 18 (a-f) above, due to a client error in failing to report that [REDACTED] and [REDACTED] lived in the same household through-out the period of June 21, 2011 - July 30, 2014, (when [REDACTED] was removed and placed in foster care) and again after foster care ended, from October 2, 2014 – November 30, 2015.

All six of the Department’s overpayment claims against the petitioner must be sustained.

CONCLUSIONS OF LAW

That the county agency correctly determined that the petitioner was overpaid a total of \$10,824 FS overissuances, i.e. Claim No. [REDACTED] (\$2,569) from July 1, 2010 – June 30, 2011; Claim No.

██████████ (\$2,636) from July 1, 2011 – June 30, 2012; Claim No. ██████████ (\$2,852) from July 1, 2012 – June 30, 2013; Claim No. ██████████ (\$2,413) from July 1, 2013 – June 30, 2014; Claim No. ██████████ (\$45) from July 1, 2014 – October 31, 2014; and Claim No. ██████████ (\$309) from February 1, 2016 – April 30, 2016; all due to repeated client errors in reporting her household composition and income. She is jointly liable with ██████████ for these debts.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby is, dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

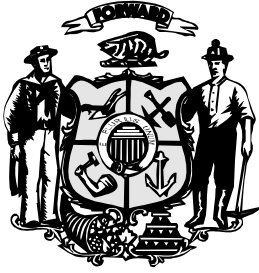
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 29th day of August, 2016

\s_____
Kenneth D. Duren
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 29, 2016.

Dane Cty. Dept. of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability